



Jawbone v. Fitbit: a Discovery Fight over the Extent of Trade Secret Misappropriation

Insights

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Jawbone and Fitbit are competitors in the business of selling fitness trackers. As competitors will sometimes do, Fitbit hired a number of employees from Jawbone in 2015. And as competitors sometimes do, Jawbone brought a legal claim against Fitbit and its five former employees. Because Jawbone and Fitbit are California companies, the allegation was not that Fitbit and the departing employees conspired to violate non-compete restrictions. Rather, the central claim is that Fitbit intended to acquire Jawbone's trade secrets and it hired the employees as part of an effort to do so.

At the outset of the case, Jawbone obtained a court order requiring that its former employees return any Jawbone files in their possession. The employees returned approximately 18,000 files. However, in a filing made on Monday, Jawbone alleges that the full extent of the misappropriation is significantly greater. Specifically, Jawbone asserts that a forensic review conducted during discovery reveals that a former Jawbone employee kept a backup storage device containing 335,191 Jawbone files. Fitbit states that it did not use or disclose the files and that it brought the existence of the storage device to the attention of Jawbone.

The discovery dispute between Jawbone and Fitbit illustrates several aspects of discovery in trade secrets cases that are increasingly common:

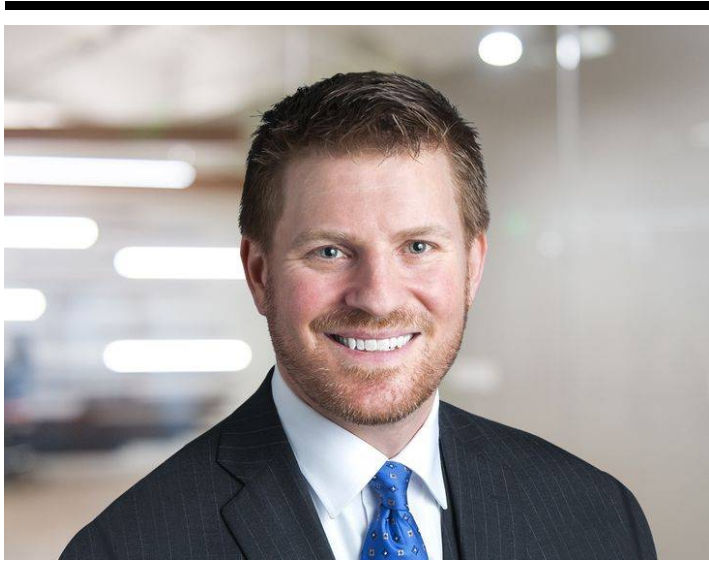
- It is easy for former employees, whether intentionally or inadvertently, to keep thousands of their former employer's files. With storage and transportation of large amounts of information increasingly easy, it is possible for both the knowing wrongdoer and also the merely careless departing employee to take large quantities of information to a competitor.
- Because of the ease with which employees can take former employer materials on small devices or forgotten accounts, discovery in a trade secrets case can be difficult. The general rule is that it's best to return everything as soon as possible to prevent unpleasant surprises down the road. However, litigation typically involves surprises, so former employees sometimes fail to account for everything until later in the case. When they do make belated discoveries, it's always better for the former employee to bring the issue to the attention of the other side and the court as opposed to the other side being the bearer of bad news.
- Electronic files contain a wealth of information concerning the dates on which information has been created, accessed, and modified. Thus, the dispute between Jawbone and Fitbit will likely

turn on the metadata for the new batch of files at issue in Jawbone's latest filing. If there is evidence that the files were accessed and/or modified in recent months, then Jawbone will have a strong issue to use. If not, then Fitbit's explanation that this was a simple oversight will be more persuasive. The middle ground would be if there is evidence that the files were accessed recently, but Fitbit argues that they (or the employee) did so to determine the contents of the storage device.

We will continue to monitor developments in this case as it progresses.

[Jawbone Complaint against Fitbit.pdf \(8.73 mb\)](#)

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